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IN THE  
**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1942

*Hankins vs U.S.*

E. A. CONWAY, SECRETARY OF STATE,  
STATE OF LOUISIANA,

*v.*

IMPERIAL LIFE INSURANCE CO., IN RECEIVER-  
SHIP, Petitioners,

UNITED STATES OF AMERICA, Opponent and  
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA.

FRANK J. LOONEY,  
Attorney for Petitioner.

## ERRATA AND ADDENDA

On page 2, line 1, for "unpublished" read, "reported in Vol. 5, Southern Reporter, 2nd series, No. 3, Jan. 29, 1942, page 314 et seq."

On page 3, line 25, after words "pages 12-13" add "Southern Reporter, 2nd, p. 320."

On page 4, line 15, after words "page 13" add "5 Southern Reporter, 2nd, p. 320."

On page 5, line 3, after words "page 19" add "5 Southern Reporter, 2nd, p. 322."

Corrections to conform original transcript references  
in petition for certiorari with pages of printed record.

## Petition

- P 3 T58 is R19.
- P 3 T59 is R20
- P 3 T62 is R22.
- P 3 T54 is R16.
- P 3 Judgment 12-13 is R122.
- P 4 Judgment 13 is R123.
- P 4 T155 is R34.
- P 4 T156 is R34.
- P 4 T167(157) is R36.
- P 4 T166-7 is R44.
- P 4 T167 is R44.
- P 5 T210 is R65-6.
- P 5 T212-13 is R67-8.
- P 5 Judgment 19 is R126-7.
- P 5 T96 is R26.

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## Citations.

### Cases:

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF LOUISIANA.**

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Udox N. Hankins, Receiver of the Imperial Life Insurance Company, a Louisiana corporation, domiciled in Shreveport, Caddo Parish, Louisiana, in Receivership, files this petition, and prays that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above case on November 3, 1941.

### **Opinions Below.**

The opinion of the State Supreme Court is unpublished, but appears in photostatic form in the Record.

### **Jurisdiction.**

The judgment of the State Supreme Court became final on refusal of the motion for rehearing on December 1, 1941. The jurisdiction of this Court is invoked under Section 237 of the Judicial Code, as amended February 13, 1925 (U. S. Code T. 28, § 344 (b) ).

### **Statute Involved.**

The statutes involved are Title 26, Sections 201 and 202, U. S. Code.

### **Statement.**

The Imperial Life Insurance Company, in receivership in the First Judicial District Court of Louisiana, filed a tableau of debts which was opposed by the United States Government, alleging that the company, as transferee of the American Benefit Association, a life insurance company, owed \$35,673.53 income taxes for the years 1934 to 1937, inclusive, and as transferee of the Imperial Protective Union, a life insurance company, owed \$5974.44 income taxes for the same years; and further claimed \$1,364.24 Social Security tax.

The Receiver's defense was that the companies were insurance companies and were liable for income taxes, not on premiums, but only for interest, dividends and rents under the terms of Title 26, Sections 201, 202 and 203 of the United States Code.



The District Judge held that no income taxes were due, finding that:

1st. The companies were mutual life insurance companies (Transcript Supreme Court of Louisiana, p. 58, which transcript is hereafter referred to by the letter "T");

2nd. That the bylaws which governed the contracts between each company and its policy holders required that certain percentages of premiums paid after the first three months be devoted to the Benefit (or Mortuary) Fund, viz., 25% for the next succeeding 12 months; 50% for the second period of 12 months; 60% for the third period of 12 months, which ratio had been strictly adhered to (T. 59);

3rd. That the definition given by Congress in U. S. Code T. 26 § 201 governed, because (a) the business of the companies was life insurance, and (b) that more than 50% of their total reserve was for mortuary and policy benefits (T. 62).

4th. That the Social Security Tax was due by the Imperial Life Insurance Company (T. 54).

A photostatic copy of the Supreme Court's opinion is contained in the record.

The following are excerpts from that Judgment, (pages 12-13):

"In the sense that they were insuring the lives of their members, the companies were manifestly engaged in the life insurance business. But that is not the question. The question is whether

they were life insurance companies within the meaning of the term as defined by the federal statute—that is, did these companies keep or accumulate reserve funds to be held for the fulfillment of their insurance contract and, if so, did the reserve funds ‘comprise more than 50 per centum of its total reserve funds’? \* \* \* However, there has been no proof submitted by the receiver to demonstrate that this benefit or reserve fund comprised more than 50 per centum of the total reserve funds of the company. In the absence of such proof, the company cannot be properly classified as a life insurance company as defined by Section 201 (a) of the federal statute.”

Again, (page 13):

“The use of the words ‘reserve funds’ in the definition contained in Section 201 (a) of the statute presupposes, we think, typical legal reserves based on actuarial calculations and recognized tables of mortality or other experience. The Treasury Department has interpreted the provisions of Section 201 (a) in this sense. . (citing regulations)”

There were no disputed facts in the case. The evidence of the Government witnesses, which was the only evidence in the case as to the “reserve fund,” was that the fund transferred to the Imperial Life Insurance Company by the American Benefit Association, namely \$40,000.00 (T. 155), and that transferred by the Imperial Protective Union, namely \$5,085.00 (T. 156), were transferred to the Mortuary Fund of the Imperial Life Insurance Company (T. 167). Also that these transferred funds were from the “Benefit Fund” of the American Benefit Association (T. 166-167) and the “Benefit Fund” of the Imperial Protective Union (T. 167). (Testimony of G. C. Crawford,

Special Agent Intelligence Department, T. 157; also Charlton testimony, T. 210, 212-13). The Louisiana Supreme Court also held (p. 19):

"The evidence discloses to our satisfaction that the defendant company was a transferee within the meaning of the federal statute and therefore liable for the payment of the income tax due by the transferor companies to the extent of the value of the assets (\$45,085) which it received from them. *The defendant, by these transfers, acquired all of the tangible assets of the transferor concerns to the prejudice of the Federal Government and other creditors.*"

The undisputed evidence given by Government witness Charlton (T. 96) is that at the time of the transfers the transferor companies were solvent. There was no other evidence concerning the basis on which the "reserve" was established except that the reserve was based on the contract between the companies and their member certificate holders as required by the by-laws.

#### **Questions Presented.**

1. When Congress declares, in U. S. Code T. 26 Section 201(a) that "the term 'life insurance company' means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance) the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds," has the Supreme Court of Louisiana the right to add to this definition, that this reserve fund must have an "actuarial basis"?

2. When the evidence offered by the Government shows that the "reserve fund" of a life insurance company consists entirely of funds held for the fulfillment of its contracts, as required by U. S. Code Title 26, Section 201(a), is it necessary for a Receiver, whose account filed in a State receivership proceeding is opposed by the United States Government, to offer evidence tending to show that there was no other reserve fund?

### **Reasons for Granting the Writ.**

This case presents a question of general importance in the administration of the Revenue Laws as well as conflict between the decision of the Supreme Court of Louisiana and the Federal Courts.

1. The decision of the Court below is inconsistent with the plain language of the statute, U. S. Code Title 26, Section 201(a), and many federal decisions, and especially, *Old Colony R. R. Co. v. Commissioner Internal Revenue*, 284 U. S. 552, 561, questioning even the acquaintance of Congress with an "accountant's phrase", and *Fox v. Standard Oil Co.*, 294 U. S. 87, 96, rejecting "substitutes for the definition set before us by the lawmakers."

2. The decision of the Court below violates a precept of law generally acknowledged and especially declared in *New Orleans Railway Company v. National Rice Mill Co.*, 224 U. S. 80, holding, "The plaintiff was entitled to the benefit of all the testimony in the case from whatever source it came . . . even though having the burden of proof"; and numerous decisions holding that the presumption in favor of a Commissioner's finding is only *prima facie* and the Board of Tax Appeals has no right to reject

even expert testimony overturning same without personal knowledge. See *Belridge Oil Co. v. Comm.* Internal Revenue, 85 F. (2d) 762, 763.

3. The decision below misconstrues the decisions of the United States Supreme Court in all cases cited on Treasury Regulation 86, Revenue Act of 1934, which held that the Treasury regulation applied to deductions—but they did not pretend to affect or change the definitions in the revenue laws.

#### CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this petition should be granted.

FRANK J. LOONEY,  
Attorney for Petitioner.